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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TODD R.G. HILL,

Plaintiff,

v.

THE BOARD OF DIRECTORS, OFFICERS AND AGENTS AND INDIVIDUALS OF THE PEOPLES COLLEGE OF LAW, et al.,

Defendants.

Case No.: 2:23-cv-01298-JLS (BFM)

STATE BAR DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS THIRD AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

DATE:	November 12, 2024
TIME:	10:00 A.M.
COURTROOM:	780, 7th Floor
JUDGE:	Hon. Brianna Fuller Mircheff

[*Request for Judicial Notice and Proposed Order filed concurrently herewith*]

NOTICE OF MOTION AND MOTION TO DISMISS

TO PLAINTIFF, IN PRO PER, AND ALL PARTIES:

PLEASE TAKE NOTICE THAT ON November 12, 2024, at 10:00 a.m., in the Courtroom of the Honorable Brianna Fuller Mircheff, Courtroom 780, 7th Floor, Roybal Federal Building and United States Courthouse, 255 E. Temple Street, Los Angeles, CA, 90012, counsel for Defendants Louisa Ayrapetyan; Natalie Leonard; Leah Wilson; Brandon Stallings; Ruben Duran; Hailyn Chen; Audrey Ching; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; Paul Kramer; Jean Krasilnikoff; Ellin Davtyan; George Cardona; Devan McFarland; Enrique Zuniga ("State Bar Defendants") will and hereby do move the Court for an Order under Federal Rules of Civil Procedure 8, 12(b)(1), and 12(b)(6) to dismiss Plaintiff's Third Amended Complaint ("TAC") as to all claims against the State Bar Defendants.

The Motion is brought on the following grounds:

The TAC should be dismissed for failure to comply with Federal Rule of Civil Procedure 8.

The TAC and each and every one of its claims against the State Bar Defendants sued in their official capacity should be dismissed under Federal Rule of Civil Procedure 12(b)(1) because Plaintiff's attempt to rely on *Ex parte Young* does not overcome the State Bar Defendants' Eleventh Amendment immunity. *See Hirsh v. Justices of Supreme Court of Cal.*, 67 F.3d 708, 712 (9th Cir. 1995) (citing *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)); *MacKay v. Nesbett*, 412 F.2d 846 (9th Cir. 1969).

The TAC should be dismissed under Federal Rule of Civil Procedure 12(b)(6) because Plaintiff fails to state any tangible claim for relief against any State Bar Defendant:

(1) State Bar Defendants are entitled to qualified immunity as to Plaintiff's federal claims asserted against them in their individual capacities. *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir. 2001).

(2) Plaintiff fails to state sufficient facts to support any claim, under federal or state law, against any State Bar Defendant. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007).

(3) Plaintiff fails to adequately plead compliance with the California Government Claims Act. which bars his state-law claims seeking monetary relief. *See State of Cal. v. Superior Court* (*Bodde*), 32 Cal. 4th 1234, 1239 (2004).

(4) Dismissal is appropriate as to members of the State Bar Board of Trustee and Committee of Bar Examiners because these individuals are not proper defendants. *See Nevada Irrigation Dist. v. Sobeck*, 705 F. Supp. 3d 1093, 1109 (E.D. Cal. 2023).

(5) Plaintiff seeks remedies that are not supported by any claim or that fail as a matter of law. *See Whittlestone, Inc. v. Handi-Craft Co*., 618 F.3d 970, 974–45 (9th Cir. 2010); *Rosenfeld v. JPMorgan Chase Bank, N.A*., 732 F. Supp. 2d 952, 975 (N.D. Cal. 2010).

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, and records incorporated therein, all pleadings and papers on file in this action and any related actions, and oral argument as may be presented to the Court.

Compliance with Local Rule 7-3:

This motion is made following a conference of the parties pursuant to L.R. 7-3 which took place by phone on September 3, 16, and 18, 2024, and numerous substantive emails between August 30 and September 18, 2024. The parties were unable to reach agreement regarding this Motion.

Dated: September 23, 2024

Respectfully submitted,

By: /s/ *JEAN KRASILNIKOFF*
JEAN KRASILNIKOFF
Assistant General Counsel

Attorneys for Defendants

Louisa Ayrapetyan; Natalie Leonard; Leah Wilson; Brandon Stallings; Ruben Duran; Hailyn Chen; Audrey Ching; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; Paul Kramer; Jean Krasilnikoff; Ellin Davtyan; George Cardona; Devan McFarland; Enrique Zuniga

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's prior complaints have already been dismissed for failure to comply with Federal Rule of Civil Procedure 8)and various other pleading deficiencies. *See* Dkts. 37, 45, 145. The Third Amended Complaint fails to remedy these issues, and Plaintiff now asserts eight claims against dozens of defendants, including State Bar officials, relating to Plaintiff's dissatisfaction with the State Bar's regulation of his former law school, the Peoples College of Law ("PCL"). Despite Plaintiff having already amended his complaint three times, Plaintiff's TAC remains disjointed, incomprehensible, and has no legal merit. Plaintiff's TAC should be dismissed without leave to amend and the State Bar Defendants dismissed from this action.[1]

First, the TAC should be dismissed with prejudice due to Plaintiff's continued failure to comply with Rule 8. The 54-page TAC contains 276 paragraphs of disjointed allegations along with 128 pages of exhibits asserting claims against sixteen State Bar Defendants, even though, *eight* of those defendants are not identified in any cause of action in the body of the TAC. Additionally, Plaintiff continues to use an improper shotgun pleading style that fails to allege what actions specific defendants took and how those actions harmed Plaintiff, and instead improperly asserts legal arguments and conclusions rather than clear, factual allegations. Finally, Plaintiff continues to lump defendants together and realleges and reincorporates prior paragraphs throughout the TAC, despite this Court's prior Rule 8 warnings.

[1] The State Bar Defendants are defendants Louisa Ayrapetyan, Natalie Leonard, Leah Wilson, Brandon Stallings, Ruben Duran, Hailyn Chen, Audrey Ching, Melanie Shelby, Arnold Sowell, Jr., Mark Toney, Paul Kramer; Jean Krasilnikoff, Ellin Davtyan, George Cardona, Devan McFarland, and Enrique Zuniga.

Second, Plaintiff's attempt to impose liability against the State Bar Defendants in their official capacity under *Ex parte Young* fails because this exception to sovereign immunity does not apply where, as here, the relief sought is retrospective.

Third, Plaintiff improperly violates the Court's order granting leave to amend to "file a Third Amended Complaint remedying the deficiencies detailed herein" by adding three new claims (the second, third, and seventh causes of action) that were not previously asserted in the SAC. *See* Dkts. 132, 145.

Fourth, under Federal Rule of Civil Procedure 12(b)(6), Plaintiff fails to state any claim for relief against any State Bar Defendant.

Fifth, dismissal is appropriate as to State Bar Board of Trustee members and CBE members because these individuals are not proper defendants.

Sixth, the TAC seeks remedies that are not supported by any claim or fail as a matter of law.

Because Plaintiff has now been permitted to amend his complaint three times and is still unable to remedy the defects, the TAC should be dismissed without leave to amend as to the State Bar Defendants.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The State Bar's Regulation of Peoples College of Law

The Committee of Bar Examiners ("CBE") is a State Bar committee that administers the bar examination and certifies applicants who have fulfilled the admission requirements to the Supreme Court. Bus. & Prof. Code §§ 6060, 6064. The CBE is also charged with the approval, regulation, and oversight of law schools in California. Bus. & Prof. Code §§ 6060(h)(2); 6060.7. The CBE regulates California Unaccredited Law Schools, which included PCL, the school Plaintiff attended, until it lost its registered status in May 2024. TAC ¶¶ 3, 114.

B. Plaintiff's Allegations Against the State Bar Defendants

The crux of Plaintiff's allegations is that the State Bar failed to adequately regulate PCL. After the Court *sua sponte* dismissed his initial and First Amended Complaint for

failure to comply with Rule 8, Dkts. 1, 37, 45, Plaintiff filed a Second Amended Complaint and the then-named State Bar Defendants filed a motion to dismiss the SAC in its entirety on December 4, 2023. Dkts. 55, 88.

On August 5, 2024, the Court issued an order accepting the magistrate judge's interim report on the numerous pending motions to dismiss, granted in part the State Bar Defendants' motion to dismiss, and dismissed the SAC for failure to comply with Rule 8. Dkt. 145. Specifically, the Court dismissed with prejudice the majority of Plaintiff's claims against the State Bar Defendants based on Eleventh Amendment immunity (except for Plaintiff's Twelfth and Thirteenth Causes of Action based on Title IX and his Sixth and Seventh Causes of Action to the extent those claims seek declaratory or injunctive relief), dismissed with prejudice Plaintiff's claims under 18 U.S.C. §§ 241, 242, and 245 because there is no private right of action under those statutes, and dismissed with prejudice any State Bar departments and committees named as defendants. *Id*.

III. LEGAL STANDARDS

To comply with Rule 8, a pleading must contain a short and plain statement showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). Each allegation must be "simple, concise, and direct …." *Id.* 8(d)(1). The purpose of this requirement is to "'give the defendant fair notice of what the … claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007) (citation omitted). Violation of Rule 8 is a basis for dismissal independent from Rule 12(b)(6). *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011).

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) tests the Court's subject matter jurisdiction. *See Savage v. Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036, 1039–40 (9th Cir. 2003). "Federal courts are of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am*., 511 U.S. 375, 377 (1994) "They possess only that power authorized by the Constitution or a statute, which is not to be expanded by judicial decree." *Id*. "A federal court is presumed to lack jurisdiction in a particular case

unless the contrary affirmatively appears." *Stock W., Inc. v. Confederated Tribes of Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). Accordingly, the court will presume lack of subject matter jurisdiction until the plaintiff proves otherwise in response to a Rule 12(b)(1) motion to dismiss. *See Kokkonen*, 511 U.S. at 376–78; *see Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986).

Rule 12(b)(6) authorizes dismissal of a pleading for "failure to state a claim upon which relief can be granted." "A Rule 12(b)(6) dismissal may be based on either a 'lack of cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008) (citation omitted). To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face[.]" *Twombly*, 550 U.S. at 570. A plaintiff must thus allege facts that consist of "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The allegations must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Instead, a plaintiff must allege facts sufficient to "raise a right to relief above the speculative level." *Id*. While a court must accept the allegations of the complaint as true and construe the pleading in the light most favorable to the plaintiff, the "court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).

Where a plaintiff cannot recover damages or other relief as a matter of law, the proper procedural vehicle to dismiss the requested remedy is a motion under Rule 12(b)(6) rather than a motion to strike under Rule 12(f). *See Whittlestone, Inc. v. Handi-Craft Co*., 618 F.3d 970, 974–45 (9th Cir. 2010); *Orozco v. Vivint, Inc*., 2021 WL 1153032, at *3 (C.D. Cal. Feb. 19, 2021). Additionally, where a plaintiff seeks remedies without an adequately pled underlying cause of action, such remedies should be

dismissed. *See, e.g., Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F. Supp. 2d 952, 975 (N.D. Cal. 2010).

When amendment of a complaint would be futile, as it would be here, it is appropriate for the district court to dismiss the complaint with prejudice. *See, e.g., Curry v. Yelp Inc.*, 875 F.3d 1219, 1228 (9th Cir. 2017).

IV. ARGUMENT

A. The TAC Should Be Dismissed for Failure to Comply with Rule 8

This Court has dismissed Plaintiff's complaint on three occasions for failure to comply with Rule 8, and it should do so again. As a preliminary matter, it remains unclear which defendants are implicated by any of Plaintiff's claims. The caption of the TAC identifies sixteen State Bar Defendants, but only eight of the sixteen State Bar Defendants are named to any particular cause of action. *See* TAC at pp. 19, 24, 28, 30, 33, 43, 46. Specifically, Defendants Shelby, Sowell, Toney, Krasilnikoff, Davtyan, Cardona, McFarland and Zuniga are not identified in any cause of action in the body of the TAC. Additionally, it remains unclear whether Plaintiff intended to bring his sixth cause of action against all sixteen State Bar Defendants, as Plaintiff identifies specific State Bar employees that he holds responsible for the sixth cause of action, while simultaneously labeling that cause of action as being asserted "[a]gainst [a]ll [d]efendants." *Id.* at pp. 36–42.

Nor does Plaintiff assert any factual allegations about how any State Bar Defendant violated the law or how Plaintiff was injured by their conduct, instead repeating the same conclusory, legal allegations asserted in prior complaints. The Ninth Circuit has approved dismissal of "shotgun pleading" complaints full of "everyone did everything" allegations. *Destfino v. Reiswig*, 630 F.3d 952, 958 (9th Cir. 2011).

Additionally, just as in prior complaints, Plaintiff continues to lump defendants together (*see, e.g.*, TAC ¶¶ 132, 159, 163, 174, 175, 188, 189, 201, 202, 216, 240(f), 248) and confusingly realleges and reincorporates all prior paragraphs throughout his claims (*id.* ¶¶ 133, 160, 176, 192, 203, 217, 240, 251, 260). Complaints like the TAC that are

"verbose, confusing and almost entirely conclusory" fail to meet the standards required under Rule 8. *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981).

Where, as here, Plaintiff has been permitted to amend his complaint three times to comply with Rule 8 and has failed to do so, the TAC should be dismissed without leave to amend under Rule 8.

B. Plaintiff's Attempt to Rely on *Ex Parte Young* Does Not Overcome Sovereign Immunity

As the Court previously held, the majority of Plaintiff's claims asserted against the State Bar Defendants in their official capacity are barred by the Eleventh Amendment. *See* Dkt. 132 at 17–23. Plaintiff now attempts to rely on the *Ex parte Young* exception to sovereign immunity to impose liability on the State Bar Defendants in their official capacity. *See* TAC ¶ 261. However, relief under *Ex Parte Young* is not available here because the relief Plaintiff seeks is purely retrospective in nature.

The *Ex parte Young* exception to sovereign immunity "allows only prospective injunctive relief to prevent an ongoing violation of federal law." *Doe v. Lawrence Livermore Nat. Lab'y*, 131 F.3d 836, 840 (9th Cir. 1997). This is because the "Eleventh Amendment does not permit retrospective declaratory relief." *Lund v. Cowan*, 5 F.4th 964, 969–70 (9th Cir. 2021). Relief that is "aimed at remedying a past violation of the law" is retrospective, whereas relief "aimed at remedying an ongoing violation of federal law" is prospective. *Cardenas v. Anzai*, 311 F.3d 929, 935 (9th Cir. 2002).

Here, the *Ex parte Young* exception does not apply to Plaintiff's claims because the relief Plaintiff is seeking is plainly retrospective. Plaintiff seeks declaratory relief that the State Bar violated Plaintiff's rights and failed to adequately supervise PCL, and various types of injunctive relief, including ordering the State Bar to issue a public apology to Plaintiff, establish a restitution fund, reform its policies, implement transparency and accountability measures, properly handle complaints, and discipline individual employees. TAC ¶¶ 263–76. This relief is not limited to "prospective injunctive relief to prevent an ongoing violation of federal law." *Doe*, 131 F.3d at 840. Instead, Plaintiff is

seeking to remedy a past injury—Plaintiff's purported inability to obtain a law degree or transcript from PCL and Plaintiff's frustration with what he perceives to be a lack of accountability from the school and failure to intervene by the State Bar. Plaintiff also does not Plaintiff allege any ongoing violation of federal law—nor could he. As the TAC acknowledges, the State Bar revoked PCL's registration and terminated its degree-granting ability in May 2024. TAC ¶ 114.

Because the *Ex parte Young* exception does not apply to Plaintiff's claims, the State Bar Defendants are entitled to Eleventh Amendment immunity as to any claims asserted against them in their official capacities.

C. The TAC Should be Dismissed Because It Fails to State a Claim Against Any State Bar Defendant

As a threshold issue, Plaintiff has improperly asserted new claims—causes of action two, three, and seven—against the State Bar Defendants despite not having leave to assert such claims. *See* Dkt. 132. Where, as here, "'the language of an order clearly states that a plaintiff may only amend to address certain deficiencies identified in the order, courts have held that a plaintiff is barred from adding new claims or parties.'" *Puckett v. Bolanos*, 2022 WL 18231781, at *1 (C.D. Cal. Feb. 10, 2022) (Staton, J.). These claims—and the remainder in the TAC—are also subject to dismissal under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

1. The State Bar Defendants Are Entitled to Qualified Immunity

Plaintiff's federal claims against the State Bar Defendants in their individual capacities are barred by qualified immunity. The doctrine of qualified immunity "shields government officials performing discretionary functions from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Saved Mag. v. Spokane Police Dept.*, 19 F.4th 1193, 1198 (9th Cir. 2021). A federal or state official is entitled to qualified immunity "unless a plaintiff pleads facts showing (1) that the official violated a

statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011).

Courts are "permitted to exercise [our] sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. 223, 235 (2009). "Addressing the second prong before the first is especially appropriate where 'a court will rather quickly and easily decide that there was no violation of clearly established law.'" *Jessop v. City of Fresno*, 936 F.3d 937, 940 (9th Cir. 2019) (citation omitted).

A right is "clearly established" for purposes of the second prong of the qualified immunity analysis if, "at the time of the challenged conduct, the contours of [the] right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *al-Kidd*, 563 U.S. at 741 (cleaned up). "Conduct violates a 'clearly established' right if the unlawfulness of the action in question is apparent in light of some pre-existing law." *Ballou v. McElvain*, 14 F.4th 1042, 1049 (9th Cir. 2021) (cleaned up). Courts "do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Jessop*, 936 F.3d at 940 (citation omitted). "[A]bsent such cases," courts look "to a consensus of persuasive authorities." *J.K.J. v. City of San Diego*, 17 F.4th 1247, 1259 (9th Cir. 2021) (cleaned up). "This demanding standard protects all but the plainly incompetent or those who knowingly violate the law." *Evans v. Skolnik*, 997 F.3d 1060, 1066 (9th Cir. 2021) (citation omitted).

Here, as best as the State Bar Defendants can discern, Plaintiff appears to frame the constitutional rights that the State Bar Defendants supposedly violated as being the rights to be free from racial discrimination (*see* TAC ¶¶ 132–58, 174–87) and sex discrimination (*id.* ¶¶ 248–59), which Plaintiff allegedly suffered at PCL. Both rights identified by Plaintiff are framed too generally and are not clearly established as applied to claims against the State Bar Defendants. The Supreme Court has "repeatedly stressed,"

that "courts must *not* define clearly established law at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced." *D.C. v. Wesby*, 583 U.S. 48, 63–64 (2018) (emphasis added; cleaned up). Moreover, a general legal principle—as Plaintiff has alleged here—is insufficient, instead, "[t]he rule's contours must be so well defined that it is clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Id*. at 63 (citation and internal quotation marks omitted).

Although Plaintiff complains of alleged racial and sex discrimination at his former law school, Plaintiff's attempt to impose liability on the State Bar Defendants—each of whom are public officials of a regulatory agency—for failure to intervene or more stringently regulate PCL is not reflected in any case law. This is contrary to the "general rule" that "members of the public have no constitutional right to sue state employees who fail to protect them against harm inflicted by third parties." *L.W. v. Grubbs,* 974 F.2d 119, 121 (9th Cir. 1992); *see also, e.g.*, *Hilton v. City of Wheeling*, 209 F.3d 1005, 1007 (7th Cir. 2000) (the Constitution "creates areas in which the government has to let people alone; it does not entitle them to demand services, such as police protection"). Indeed, the Ninth Circuit has "never held that the Equal Protection Clause protects private individuals who suffer sexual harassment at the hands of public officials providing them with social services." *Sampson v. Cnty. of Los Angeles by & through Los Angeles Cnty. Dep't of Child. & Fam. Servs*., 974 F.3d 1012, 1024 (9th Cir. 2020). Nor does Plaintiff allege intentional racial discrimination by the State Bar Defendants; rather, he alleges a failure to intervene or to regulate. *See Monteiro v. Tempe Union High Sch. Dist*., 158 F.3d 1022, 1026 (9th Cir. 1998) (intentional discrimination is a required element). The State Bar is unaware of any authority holding employees and officials of a regulatory agency liable for constitutional violations in similar circumstances. Where, as here, Plaintiff frames the constitutional rights too generally and the Ninth Circuit has never held officials of a regulatory agency liable for alleged discrimination by the regulated body, the constitutional right is not clearly established. *See, e.g.*, *Sabra v. Maricopa Cnty.*

Cmty. Coll. Dist., 44 F.4th 867, 886–87 (9th Cir. 2022) (affirming dismissal of quality immunity claims at pleadings stage where courts have "never held that actions like the ones challenged in this case constitute a violation" of the constitutional right at issue).

Accordingly, the State Bar Defendants are entitled to qualified immunity, and this Court may dismiss Plaintiff's federal claims (the first, third, fourth, and eighth causes of action) for this reason alone without addressing whether Plaintiff has adequately alleged that the State Bar Defendants violated the constitutional or statutory rights at issue.

2. Plaintiff Fails to State an Equal Protection Claim (First Cause of Action)

As an initial matter, Plaintiff "complaining of a violation of a constitutional right does not have a direct cause of action under the United States Constitution." *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). But even if Plaintiff's claim is construed as one under 42 U.S.C. § 1983, Plaintiff fails to state a claim.

To establish a claim for relief under section 1983, a plaintiff must establish: (1) a deprivation of federal rights (2) by a person acting under color of state law. *See* 42 U.S.C. § 1983; *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999). To state a section 1983 claim based on a Fourteenth Amendment Equal Protection violation, "a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Shooter v. Arizona*, 4 F.4th 955, 960 (9th Cir. 2021) (citation omitted); *see also Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (plaintiff must show that that the individual caused the alleged constitutional injury). Plaintiffs "must plead intentional unlawful discrimination or allege facts that are at least susceptible of an inference of discriminatory intent." *Monteiro*, 158 F.3d at 1026.

Moreover, "[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss." *Ivey v. Bd. Of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). "Because vicarious

liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's *own* individual actions, has violated the Constitution." *Iqbal,* 556 U.S. at 676 (emphasis added). Quite simply, public officials "may not be held liable merely for being present at the scene of a constitutional violation or for being a member of the same operational unit as a wrongdoer." *Felarca v. Birgeneau*, 891 F.3d 809, 820 (9th Cir. 2018).

Here, Plaintiff does not plausibly allege intentional race discrimination by State Bar Defendants Wilson, Leonard, Kramer, Ching, Duran, Stallings, and Chen and provides no factual allegations in support of his claim. Instead, Plaintiff alleges that the State Bar Defendants allowed PCL "to freely operate," should have more carefully regulated PCL, and harmed Plaintiff through their collective "inaction." *See* TAC ¶¶ 134, 137, 152, 153. Plaintiff not only fails to allege wrongful acts by each individual State Bar Defendant or how they discriminated against him in non-conclusory terms, but also fails to allege intentional discrimination. This is plainly insufficient, and this Court should dismiss this claim.

3. Plaintiff Fails to State a Claim Under Title VI (Third Cause of Action)

Plaintiff's third cause of action under Title VI of the Civil Rights Act of 1964 fails because individuals like the State Bar Defendants are not entities that can be sued under the Act. Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs or activities that receive federal financial assistance. 42 U.S.C. § 2000d. The proper defendants in a Title VI case are entities that receive federal funds, not individual persons. *Jones v. Beverly Hills Unified Sch. Dist*., 2010 WL 1222016, at *6 (C.D. Cal. Mar. 24, 2010), *report and recommendation adopted*, 2010 WL 1222023 (C.D. Cal. Mar. 25, 2010) ("[T]here is no individual liability under Title VI or Title IX."); *Shotz v. City of Plantation, Fla*., 344 F.3d 1161, 1170 (11th Cir. 2003) ("[T]he text of Title VI . . . precludes liability against those who do not receive federal funding, including individuals."). Nor can Plaintiff save his claim through amendment, given that Plaintiff does not allege intentional discrimination by any State Bar Defendant,

and merely alleges a failure to regulate and collective "inaction." *See, supra*, Section IV(C)(2)).

Accordingly, Plaintiff's Title VI claim against the State Bar Defendants fails because individuals are not proper defendants for a Title VI claim.

4. Plaintiff Fails to State a RICO Claim (Fourth Cause of Action)

To state a civil RICO claim, Plaintiff must allege facts showing: "'(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to plaintiff's 'business or property.'" *Living Designs, Inc. v. E.I. Dupont de Nemours and Co*., 431 F.3d 353, 361 (9th Cir. 2005) (citation omitted); 18 U.S.C. § 1964(c). To prevail under RICO, the predicate acts alleged "must establish a pattern of criminal activity." *Allwaste, Inc. v. Hecht*, 65 F.3d 1523, 1527 (9th Cir. 1995) (citation omitted).

Here, Plaintiff fails to plausibly allege a RICO enterprise, which is defined to include any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). Plaintiff again attempts to allege that there is an associated-in-fact enterprise among all of the defendants named in this action (TAC ¶¶ 188–89) but fails to meet minimum pleading requirements. To establish the existence of such an enterprise, a plaintiff must provide both "evidence of an ongoing organization formal or informal," and "evidence that the various associates function as a continuing unit." *Odom v. Microsoft Corp*., 486 F.3d 541, 552 (9th Cir. 2007) (en banc). At a minimum, Plaintiff must set forth particularized allegations that defendants have a common purpose to engage in fraudulent conduct and work together to achieve that purpose. *Id*.

The TAC fails to meet even this minimum requirement, instead alleging that defendants affiliated with PCL committed various types of misconduct and that the State Bar Defendants "either participated in or were deliberately indifferent" to that misconduct and failed to intervene. TAC ¶¶ 193–94, 198. Plaintiff includes no factual allegations as to the State Bar Defendants' involvement and, to the contrary, suggests that

RICO liability should be imposed on the State Bar Defendants merely for their purported "inaction" rather than any involvement in the purported enterprise. Such allegations are plainly insufficient, as there are "no specific facts indicating that defendants acted with an objective unrelated to ordinary business or government aims." *Comm. to Protect our Agric. Water v. Occidental Oil and Gas Corp.*, 235 F. Supp. 3d 1132, 1175 (E.D. Cal. 2017) (dismissing RICO claims with prejudice) ("*Occidental*"); s*ee Rosenthal v. Vogt*, 229 Cal. App. 3d 69, 78 (1991) (dismissing RICO claim against State Bar and its officials; "[w]hile RICO is a broad statute, violation of its terms cannot be established by hyperbole or rhetoric").

Even if Plaintiff properly alleged a RICO enterprise, which he has not, Plaintiff's claim fails for the additional reason that he has not alleged facts demonstrating "racketeering activity." 18 U.S.C. § 1961(1) defines racketeering activity based on a specific list of predicate crimes that violate state and/or federal law, such as murder, kidnapping, and arson. Plaintiff alleges the racketeering acts here are wire and mail fraud, extortion, "unreasonable restraint of trade," violation of the State Bar Act, "conflicts of interest and ethical breaches," "breaches of fiduciary duty and implied covenants of good faith and fair dealing," constitutional violations, and antitrust violations. TAC ¶ 196. Even if all of these acts could serve as predicate acts under RICO (and they cannot), the TAC includes no factual allegations explaining what these acts were, when they were purportedly carried out, and which defendants are responsible. *Id*. ¶¶ 188–200. For example, as to the purported predicate act of extortion, the TAC includes a threadbare allegation that unnamed defendants were "[t]hreatening to withhold certifications and access to education unless unjustified payments were made." *Id*. ¶ 196(ii). Nor do Plaintiff's predicate acts of mail fraud and wire fraud satisfy the heightened pleading requirements under Federal Rule of Civil Procedure 9(b) for fraud. *See Kearns v. Ford Motor Co*., 567 F.3d 1120, 1124 (9th Cir. 2009) ("Rule 9(b) demands that the circumstances constituting the alleged fraud be specific enough to give defendants notice of the particular misconduct[.]"). Simply put, the RICO claim is subject to dismissal

because Plaintiff "does not allege facts explaining how any of defendants' claimed communications involved a misrepresentation, or how any innocuous communications were an essential part of a scheme to defraud." *Occidental*, 235 F. Supp. 3d at 1179–80.

Accordingly, Plaintiff's RICO claim fails as to the State Bar Defendants.

5. Plaintiff Fails to State a Title IX Claim for Sex-Based Retaliation (Eighth Cause of Action)

Title IX protects individuals from discrimination based on sex in educational programs or activities that receive federal financial assistance. *See* 20 U.S.C. § 1681, *et seq*. Title IX "reaches institutions and programs that receive federal funds . . . but it has consistently been interpreted as not authorizing suit against . . . individuals." *Fitzgerald v. Barnstable Sch. Comm*., 555 U.S. 246, 257 (2009) (citations omitted); *Al-Rifai v. Willows Unified Sch. Dist*., 469 F. App'x 647, 649 (9th Cir. 2012) ("Title IX does not create a private right of action against school officials, teachers, and other individuals who are not direct recipients of federal funding.") (citation omitted); *Shotz*, 344 F.3d at 1170 n. 12 ("[L]ike Title VI, Title IX does not recognize individual liability.").

Here, Plaintiff's Title IX claim fails for multiple reasons. First, the claim fails because it names only names individual State Bar Defendants who cannot be sued under Title IX. Nor can Plaintiff use Section 1983 as an "end run" around Title IX's restriction limiting liability to direct recipients of federal funding. *See, e.g., Doe v. Napa Valley Unified Sch. Dist*., 2018 WL 4859978, at *5 (N.D. Cal. Apr. 24, 2018) ("Plaintiff may only bring his Title IX claim against the [school district], and allowing him to bring a Section 1983 claim against the Individual District Defendants would permit an end run around Title IX's explicit language limiting liability to funding recipients.") (cleaned up). Plaintiff was instructed to remedy this specific pleading issue in the interim report and recommendation, Dkt. 132 at 21, n. 5, but he failed to do so.

Second, any amendment to name the State Bar would be futile, because Title IX prohibits only intentional discrimination. *See Jackson v. Birmingham Bd. of Educ*., 544 U.S. 167, 178 (2005)). A Title IX claim does not lie against an entity where "liability

rests solely on principles of vicarious liability or constructive notice." *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 288 (1998); *see also Mansourian v. Regents of Univ. of California*, 602 F.3d 957, 966 (9th Cir. 2010) (damages are precluded for unintentional violations of Title IX). In cases that do not involve the official policy of an entity, there is no damages remedy under Title IX unless an official who "has authority to address the alleged discrimination and to institute corrective measures" at the entity "has actual knowledge of discrimination in the recipient's programs and fails adequately to respond." *Gebser*, 524 U.S. at 290. The TAC lacks any such allegations.

Indeed, there are no factual allegations regarding sex-discrimination by the State Bar Defendants. Instead, the TAC merely alleges that another defendant associated with PCL authored and disseminated a letter about Plaintiff to the school community that "falsely portrayed Plaintiff as a misogynist and as an individual exhibiting negative male character traits." TAC ¶ 253. The TAC includes no allegations about how the State Bar Defendants were involved, apart from the speculation that the letter could have had the "implicit or explicit endorsement" of State Bar officials. *Id.*

This claim should therefore be dismissed with prejudice.

6. Plaintiff's State-Law Claims Fail as a Matter of Law

Because Plaintiff's federal claims are subject to dismissal and because this Court's subject matter jurisdiction is based only upon federal question jurisdiction (TAC ¶¶ 35–36), this Court should decline to exercise supplemental jurisdiction over Plaintiff's remaining state-law claims. *See* 28 U.S.C. § 1367(c)(3); *Lima v. U.S. Dept. of Educ.*, 947 F.3d 1122, 1128 (9th Cir. 2020). In any event, Plaintiff's state-law claims fail as matter of law.

a. Plaintiff Failed to Adequately Allege Compliance with the Government Claims Act

A party seeking to recover monetary damages from a public entity or its employees must submit a claim to the entity before filing suit in court no later than six months after the cause of action accrues. *Amarise v. Related Cos.*, 2020 WL 8474757, at *6 (C.D. Cal.

Nov. 24, 2020); Cal. Gov't Code §§ 911.2(a), 945.4. With respect to Plaintiff's state-law claims against the State Bar Defendants, Plaintiff does not plausibly allege compliance with the Government Claims Act and therefore, each state-law claim is subject to dismissal on that basis. *See, e.g., Willis v. City of Carlsbad*, 48 Cal. App. 5th 1104, 1119 (2020) ("[T]he timely filing of a written government claim is an element that a plaintiff is required to prove in order to prevail on his or her cause of action.").

As a further mandatory requirement, Government Code section 915(a) sets forth the manner of delivery of a claim against a public entity. Section 915(a) provides that a claim "shall be presented to a local public entity by either of the following means: (1) Delivering it to the clerk, secretary or auditor thereof. (2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office." *Id.* A misdirected claim will only satisfy the presentation requirement if it is "actually received by a statutorily designated recipient." *DiCampli-Mintz v. Cnty. of Santa Clara*, 55 Cal. 4th 983, 992 (2012). "If an appropriate public employee or board never receives the claim, an undelivered or misdirected claim fails to comply with the statute." *Id.* "If a plaintiff alleges compliance with the claims presentation requirement, but the public records do not reflect compliance, the governmental entity can request the court to take judicial notice … that the entity's records do not show compliance." *Gong v. City of Rosemead*, 226 Cal. App. 4th 363, 376 (2014).

Here, Plaintiff alleges that he filed two government claims, one on an unspecified date in December 2022 and another on August 13, 2024. *See* TAC ¶¶ 85–86. Plaintiff's allegation that he filed a government claim in December 2022 has never been previously asserted in any complaint, and the State Bar's judicially noticeable records demonstrate that it has no record of Plaintiff having submitted, much less complied with the claims presentation requirements. *See* Request for Judicial Notice ("RJN"), Exs. A, B. Moreover, the fact that Plaintiff submitted a government claim in August 13, 2024—a claim that is plainly untimely, as it was filed more than a year after Plaintiff initiated this lawsuit and well beyond six months after Plaintiff's action accrued (*see* TAC ¶¶ 38–

131)—belies his allegation that he already had presented a claim in December 2022. RJN, Ex. B.

Accordingly, to the extent his second, sixth, and seventh causes of action seek monetary damages, they must be dismissed in their entirety.

b. Plaintiff Fails to State an Unruh Act Claim (Second Cause of Action)

Plaintiff's claim for violation of the Unruh Civil Rights Act, California Civil Code section 51, fail because that Act only prevents discrimination by business establishments. *See Brennon v. Superior Court*, 13 Cal. 5th 662, 675 (2022) ("The purpose and legislative history of the Unruh Civil Rights Act—and its predecessor statute—make clear that the focus of the Act is the conduct of private business establishments."). Neither the State Bar nor its employees constitute a business establishment subject to the Unruh Act. *See Kohn v. State Bar of Californi*a, 497 F.Supp.3d 526, 539 (N.D. Cal. 2020) (on appeal). This claim should therefore be dismissed with prejudice.

c. Plaintiff's Negligence-based Claims Fail (Sixth and Seventh Causes of Action)

Plaintiff's claims for negligence, negligence per se, and negligent hiring, retention, and supervision are premised on his theory that the State Bar Defendants failed to adequately regulate PCL. *See* TAC ¶¶ 216–47. A claim for negligence against a public entity or its employees or officials is barred by numerous immunities set forth in the California Government Claims Act, including: (1) State Bar Defendants are immune from liability to the extent Plaintiff alleges they failed to adopt or enforce enactments, Gov't Code §§ 818.2, 821; *see also Hacala v. Bird Rides, Inc*., 90 Cal. App. 5th 292, 305–06 (2023) (city immune from claim that it negligently failed to enforce a third party's compliance with rules); and (2) State Bar Defendants are immune from liability to the extent Plaintiff argues that they were negligent in failing to withdraw PCL's registration, Gov't Code §§ 818.4, 821.2, 810.2; *see, e.g., Inland Empire Health Plan v. Superior Court*, 108 Cal. App. 4th 588, 594 (2003) (public entity not liable for negligent

credentialing). Further, to state a claim for negligence, a plaintiff must demonstrate a legal duty to use due care, a breach of such legal duty, and that the breach is the proximate cause of the resulting injury. *Vasilenko v. Grace Family Church*, 3 Cal. 5th 1077, 1083 (2017). Plaintiff offers no legal basis for the duties allegedly owed to him, nor does he allege any cognizable special relationship between himself and State Bar Defendants that would give rise to any such duty.

Accordingly, Plaintiff's negligence-based claims fail as to the State Bar Defendants.

d. Plaintiff's Conspiracy Claim Fails Because Conspiracy Is Not a Recognized Cause of Action (Fifth Cause of Action)

Plaintiff's conspiracy claim fails because conspiracy is not a recognized cause of action under California law. Civil conspiracy is essentially a mechanism for imposing vicarious liability and "is not an independent cause of action." *Navarrete v. Meyer*, 237 Cal. App. 4th 1276, 1291 (2015). Further, Plaintiff's allegations regarding his conspiracy claim are redundant of his other causes of action. *See* TAC ¶¶ 201–15. When a claim relies "on the same alleged acts, simply seek[s] the same damages or other relief already claimed in a companion [ ] cause of action, they may be disregarded as superfluous as no additional claim is actually stated." *Bionghi v. Metro. Water Dist.,*70 Cal. App. 4th 1358, 1370 (1999).[2] Accordingly, the "claim" for conspiracy should be dismissed.

[2] To the extent Plaintiff is attempting to allege a violation of 42 U.S.C. § 1985(2), it fails for the same reason as Plaintiff's equal protection claim, as "liability under this section requires proof of 'some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.'" *Cardenas v. Cnty. of Tehama*, 476 F. Supp. 3d 1055, 1068–69 (E.D. Cal. 2020) (citation omitted).

D. Plaintiff's TAC Fails for Additional Reasons

1. Dismissal Is Appropriate as to Members of the Board of Trustee Members and CBE

Seven individuals named in their individual capacity are current or former members of the Board of Trustees or the CBE.[3] But these individuals are not proper defendants because individual members of a legislative body do not have authority to bind the Board of Trustees or the CBE. *See, e.g., Nevada Irrigation Dist. v. Sobeck*, 705 F. Supp. 3d 1093, 1109 (E.D. Cal. 2023) ("individual Board Members cannot be sued where they do not have unilateral authority to act"). Plaintiff's claims against these individuals should therefore be dismissed.

2. The TAC Seeks Remedies That May Not Be Awarded

Several of the remedies requested in Plaintiff's prayer for relief fail as a matter of law.

First, as to the request for punitive damages (TAC ¶¶ 265−66), there is a general "presumption against imposition of punitive damages on governmental entities." *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 785 (2000). To overcome the presumption, "Congress must be explicit in licensing punitive damages against the sovereign." *Daniel v. Nat'l Park Serv.*, 891 F.3d 762, 771 (9th Cir. 2018). Here, none of the statutes under which Plaintiff brings his claims permit punitive damages against a public entity like the State Bar. As to civil RICO, the statute would at most permit treble damages, not punitive damages. *See* 18 U.S.C. § 1964(c). As to section 1983, courts have interpreted it as forbidding punitive damages against public entities. *See Smith v. Wade*, 461 U.S. 30, 56 (1983) (holding that section 1983 only permits punitive damages against state officials in their individual capacity where intent or reckless indifference are demonstrated). Punitive damages are unavailable in both Title VI and Title IX claims, as

[3] These individuals are Brandon Stallings; Ruben Duran; Hailyn Chen; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; and Paul Kramer. TAC ¶¶ 25–27, 29–31.

well. *Barnes v. Gorman*, 536 U.S. 181 (2002) (Title VI*); S.M.A. by Alford v. Modesto City School District*, 651 F. Supp. 3d 1177 (E.D. Cal. 2023) (Title IX).

Second, there is no basis for the civil penalties under the Business and Professions Code provisions Plaintiff cites (TAC at p. 148), because he has not alleged any claims for violation of the Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq*., or false advertising, *id*. at Bus. & Prof. Code §§ 17500 *et seq*.

Third, Plaintiff seeks an order from this Court directing the State Bar to investigate and take disciplinary action against Defendants Leonard, Wilson, Chen, and Ching for their alleged misconduct. TAC at p. 52. But Plaintiff, as a "private citizen[,] lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R. S. v. Richard D*., 410 U.S. 614, 619 (1973).

Accordingly, the above-requested relief should be dismissed.

E. Plaintiff Should Not Be Granted Leave to Amend

When it is clear that "the complaint could not be saved by any amendment," a court may dismiss a claim with prejudice. *Gompper v. VISX, Inc*., 298 F.3d 893, 898 (9th Cir. 2002) (cleaned up). Leave need not be granted where further amendment would constitute "an exercise in futility." *Ascon Properties, Inc. v. Mobil Oil Co*., 866 F.2d 1149, 1160 (9th Cir. 1989). "The district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint." *Id*.

Here, Plaintiff's claims against the State Bar Defendants suffer from numerous fatal deficiencies that cannot be cured through further amendment, and Plaintiff's TAC continues to suffer from many of the same deficiencies as his prior pleadings. Many of these deficiencies remain unaddressed in Plaintiff's proposed Fourth Amended Complaint (*see* Dkt. 164), which Plaintiff has sought leave to file and which the State Bar Defendants will address in a forthcoming opposition. These ongoing deficiencies underscore the futility of further amendment in this case. As such, all of Plaintiff's claims against the State Bar Defendants should be dismissed without leave to amend.

V. CONCLUSION

Accordingly, the State Bar Defendants respectfully request that the Court grant the motion to dismiss without leave to amend.

Dated: September 23, 2024

Respectfully submitted,

By: /s/ *JEAN KRASILNIKOFF*
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the State Bar of California, certifies that this brief contains 6,997 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 23, 2024

Respectfully submitted,

By: /s/ *JEAN KRASILNIKOFF*
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DECLARATION OF SERVICE

I, Ryan Sullivan, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of Los Angeles, that my business address is The State Bar of California, 180 Howard Street, San Francisco, CA 94105. On September 23, 2024, following ordinary business practice, I filed via the United States District Court, Central District of California electronic case filing system, the following:

STATE BAR DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS THIRD AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; REQUEST FOR JUDICIAL NOTICE; [PROPOSED] ORDER

Participants in the case who are registered CM/ECF users will be served.

See the CM/ECF service list.

I also served a copy via U.S. Mail on the following parties:

Todd R. G. Hill
41459 Almond Avenue
Quartz Hill, CA 93551
Pro Per

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, on September 23, 2024.

/s/ Ryan Sullivan
Ryan Sullivan